

a*68-211-1

AN ACT to amend Tennessee Code Annotated, Title 68, Chapter 211, Part 1, relative to solid waste.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 68-211-106, is amended by adding the following new appropriately designated subsection:

() The applicant for any solid waste permit or registration shall identify in the application any individual or business, including any corporation, partnership, association, or proprietorship in which such applicant is a principal, or exercises ownership or control, or with respect to which such applicant owns, directly or indirectly, or controls five percent (5%) or more of the stock or other equity interest of the proposed solid waste facility. In addition, the applicant shall identify in the application any other businesses under common control of an entity identified in this subsection.

SECTION 2. Tennessee Code Annotated, Section 68-211-106(h), is amended by adding the following new appropriately designated subdivisions:

() A "pattern of performance incompatible with assuring protection of the public health, safety and environment of the region" includes but is not limited to, a finding that the applicant, or persons owning or controlling or owned and controlled by the applicant, or any officer, director or manager thereof, or person owning a five percent (5%) or more interest, beneficial or otherwise, or other person conducting or managing the affairs of the applicant or of the proposed licensed premises, in whole or in part:

(A) Has, at a single facility subject to the environmental laws of any state or the United States, committed five (5) violations in the past ten (10) years (in Tennessee or any other state) that concern releases or improper handling of pollutants or hazardous wastes;

(B) Has, in the last ten (10) years, been convicted of, or has been subject to a civil judgment for, or is currently under indictment for, any offense indicating a lack of business integrity or honesty, including, but not limited to, any of the following:

(i) Illegal disposal of hazardous waste, or any other environmental felony;

(ii) Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement;

(iii) Bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, obstruction of justice, receiving stolen property, theft;

(iv) Price fixing between competitors, allocation of customers between competitors, bid rigging, or any other violation of federal, state, or municipal antitrust laws that relate to the submission of bids or proposals; or

(v) Any other felony;

(C) Has, in the last ten (10) years, admitted guilt in a criminal proceeding to conduct described in subdivision (B), which is a matter of record, but has not been prosecuted for such conduct; or has made an admission of guilt in a criminal proceeding including a plea of nolo contendere;

(D) Has, in the last ten (10) years, had any permit revoked under the laws or regulations of any state or the United States;

(E) Has, in the last ten (10) years, at a single facility been assessed fines of at least twenty-five thousand dollars (\$25,000) with at least one of those assessed fines being at least ten thousand dollars (\$10,000); or

(F) Has misrepresented a material fact in applying for a permit, including but not limited to, the past performance of the applicant.

() This section shall apply to new permits, changes of ownership, and permit renewals for all solid waste disposal facilities except for any municipal or county owned and/or operated landfill.

() With respect to permit renewals, the commissioner shall determine whether the applicant has committed any acts specified in subdivisions (A) through (F), after the effective date of this act. The commissioner may also consider, without time limitation, such other acts that the commissioner deems indicative of a pattern of performance incompatible with assuring protection of the public health, safety and environment of the region.

() With respect to new permits and changes of ownership the commissioner may also consider, without time limitation, such other acts that the commissioner deems indicative of a pattern of performance incompatible with assuring protection of the public health, safety and environment of the region.

SECTION 3. Tennessee Code Annotated, Section 68-211-106, is further amended by adding the following new appropriately numbered subsections:

() Any person wishing to operate a solid waste disposal facility which would handle more than 20,000 tons per month, except for any facility receiving at least 20,000 tons per month upon the effective date of this act; including any one (1) or more solid waste disposal facilities owned or operated by the same person in the same county, if the aggregate tons of solid waste handled per month by such facilities exceeds 20,000 tons per month, must:

(1) Get approval from the municipal solid waste region in which the facility is to be located as provided by Section 68-211-814. If the region does not yet have its plan approved then the facility does not have to get approval from such region.

(2) Get any and all required local approval (including but not limited to zoning approval).

(3) Submit a copy of an application to operate a solid waste disposal facility to the division of solid waste. This application shall be available for public review.

(4)

(A) After approval from the municipal solid waste region, any other necessary local approval, and submission of the application, and in order to inform interested persons in the area of the proposed facility, public notice shall be circulated within the geographical area of the proposed facility by any of the following means:

(i) Posting in the post office and public places of the municipality nearest the facility under consideration; or

(ii) Publishing in three (3) consecutive local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation.

(B) Public notice of the proposed facility shall include the following:

(i) Name, address and telephone number of the local county election commission(s) where petitions for a referendum can be filed;

(ii) Brief description of the time frame and procedures for requesting a referendum;

(iii) Name and address of the site owner and/or operator;

(iv) Location and size of the proposed facility;

(v) Brief description of the type of operation to be operated at the site and the type of waste that will be accepted;

(vi) Address and telephone number of the premises at which persons may obtain further information, request copies of data on this site and inspect the data. This shall include but not be limited to the division of solid waste field office where the application was submitted.

(5) Upon the written petition of registered voters residing in the county equal to not less than fifteen percent (15%) of the number of votes cast within the county for governor at the preceding gubernatorial election, and filed at the local county election commission within ninety (90) days after the last day of publication of the notice provided in this section, the election commission shall, upon verification of the required number of signatures on the petition, and not less than fifty-six (56) days before the election, order a referendum be placed upon the ballot. Any referendum conducted pursuant to this section shall be held at the next primary, general, or other countywide election.

(6) Such referendum will be to determine whether it is the will of the voters of the county that a facility of this type be located in the county. Any such election shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, shall apply to voting and elections, hereunder, insofar as practicable.

(7) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

Shall a commercial solid waste facility, handling more than 20,000 tons of solid waste per month, be located within _____ County, Tennessee?

___ For the facility

___ Against the facility.

(8) If a majority of the votes cast upon the question are against the facility then the division of solid waste shall not proceed any further with the application.

If the majority of the votes cast upon the question are in favor of permitting the facility within the county, then the application process may proceed; provided, that such a vote shall not be binding on or require the division of solid waste to issue a permit. If the majority of the votes cast are against the question, the question may be submitted to a vote at any subsequent election in the manner herein specified; provided, however, the question may not be resubmitted to a vote until two (2) years after the date of the previous referendum.

() Any person with a permit to operate a solid waste disposal facility planning to increase the amount of waste accepted to more than 20,000 tons per month, except for any facility receiving 20,000 tons per month upon the effective date of this act; including any one or more solid waste disposal facilities owned or operated by the same person in the same county, if the aggregate tons of solid waste handled per month by such facilities exceeds 20,000 tons per month, shall:

(1) Get any required approval from the municipal solid waste region in which the facility is to be located as provided by Section 68-211-814. If the region does not yet have its plan approved then the facility does not have to get approval from such region.

(2) Get any and all required local approval (including but not limited to zoning approval).

(3)

(A) After approval from the municipal solid waste region, and any other necessary local approval, and in order to inform interested persons in the area of the proposed facility, public notice shall be circulated within the geographical area of the proposed facility by any of the following means:

(i) Posting in the post office and public places of the municipality nearest the facility under consideration; or

(ii) Publishing in three (3) consecutive local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation.

(B) Public notice of the proposed facility shall include the following:

(i) Name, address and telephone number of the local county election commission(s) where petitions for a referendum can be filed;

(ii) Brief description of the time frame and procedures for requesting a referendum;

(iii) Name and address of the site owner and/or operator;

(iv) Location and size of the proposed facility;

(v) Brief description of the type of operation to be operated at the site and the type of waste that will be accepted; and

(vi) Address and telephone number of the premises at which persons may obtain further information, request copies of

data on this site and inspect the data. This shall include but not be limited to the division of solid waste field office where the application was submitted.

(4) Upon the written petition of registered voters residing in the county equal to not less than fifteen percent (15%) of the number of votes cast within the county for governor at the preceding gubernatorial election, and filed at the local county election commission within ninety (90) days after the last day of publication of the notice provided in this section, the election commission shall, upon verification of the required number of signatures on the petition, and not less than fifty-six (56) days before the election, order a referendum be placed upon the ballot. Any referendum conducted pursuant to this section shall be held at the next primary, general, or other countywide election.

(5) Such referendum will be to determine whether it is the will of the voters of the county that a facility located in the county accepts more than 20,000 tons of solid waste per month. Any such election shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this act, shall apply to voting and elections hereunder, insofar as practicable.

(6) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

Shall the _____ solid waste facility, located within
_____ County, Tennessee, be allowed to accept more than
20,000 tons of solid waste per month?

__ For the increase

__ Against the increase

(7) If a majority of the votes cast upon the question are against the increase then the facility shall not accept more than 20,000 tons of solid waste per month. If the majority of the votes cast upon the question are in favor of the increase, then the facility may accept more than 20,000 tons of solid waste per month; provided, that such a vote shall not be binding on or require the division of solid waste to modify the permit. If the majority of the votes cast are against the question, the question may be submitted to a vote at any subsequent election in the manner herein specified: provided, however, the question may not be resubmitted to a vote until two (2) years after the date of the previous referendum.

() Effective July 1, 1995, all solid waste disposal facilities shall be required to submit monthly reports to the appropriate field office of the division of solid waste detailing all amounts of solid waste, measured in tons, received at the facility during the past month. Such report shall be due on the 15th of the month immediately following the reporting period.

() Any person accepting more than an average of 20,000 tons per month over any three-month period, without complying with the provisions of this section, shall be subject to permit revocation.

() This section shall apply to all solid waste disposal facilities except for any municipal or county owned and/or operated landfill.

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(A) This section shall not apply to any county or municipality with a population of more than two hundred fifty thousand (250,000), according to the 1990 federal census or any subsequent federal census.

(B) This section shall not apply to any facility that expands to 20,000 tons or more of solid waste per month solely because of economic and/or population growth within the solid waste region as defined by Section 68-211-802.

() Nothing in this section shall be construed to require a solid waste disposal facility to accept solid waste generated within the solid waste region, nor shall this section be construed to prohibit or impede the acceptance of solid waste from outside such solid waste region.

SECTION 4. Tennessee Code Annotated, Section 68-211-113, is amended by deleting subsection (d) in its entirety and by substituting instead the following:

(d) An appeal may be taken from any final order or other final determination of the board or of the commissioner by any party, with the exception of the department. Any appeal from any final order or other final determination of the board by any party shall be conducted as provided by the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

SECTION 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 6. This act shall take effect upon becoming a law, the public welfare requiring it.

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